

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ALEXANDRIA STRIEGEL,

Plaintiff,

vs.

AMERICAN FAMILY MUTUAL  
INSURANCE COMPANY, DOES I–V, and  
ROE CORPORATIONS I–V, inclusive,

Defendants.

Case No.: 2:13-cv-01338-GMN-VCF

**ORDER**

Pending before the Court is the Motion for Summary Judgment (ECF No. 84) filed by Defendant American Family Mutual Insurance Company (“Defendant”). Plaintiff Alexandria Striegel (“Plaintiff”) filed a Response (ECF No. 87), and Defendant filed a Reply (ECF No. 88). For the reasons discussed below, Defendant’s Motion is **GRANTED**.

**I. BACKGROUND**

This case arises out of an automobile accident occurring on March 24, 2006, involving Defendant’s insured, Rujake Gross (“Gross”). (*See* Exs. 7, 9 to Response, ECF No. 87). Gross held a policy of insurance with Defendant American Family Mutual Insurance Company (“Defendant”), which included bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence. (Ex. 2 to Response, ECF No. 87). As a result of the accident, seven individuals, including Plaintiff Alexandria Striegel and Thomas Striegel (collectively, the “Striegels”), filed bodily injury claims with Defendant against Gross’s policy. (*See* Exs. 7, 9 to Response, ECF No. 87).

On April 7, 2006, Plaintiff’s counsel, Thomas Christensen (“Christensen”) of Christensen Law Offices LLC, sent a letter to Defendant, advising Defendant of his

1 representation of Plaintiff and requesting information regarding Gross's coverage. (Ex. C to  
2 Mot. Summ. J., ECF No. 84-3). Subsequently, on April 28, 2006, Christensen sent Defendant  
3 another letter to Defendant, advising that his clients, the Striegels, "are willing to settle these  
4 claims for the per person policy limits provided that you have the same in my office within two  
5 weeks together with proof that those are the only policy limits available to provide  
6 compensation to my clients for this incident." (Ex. 3 to Response, ECF No. 87). Christensen's  
7 letter also included a list of providers and signed medical authorizations for the Striegels. (*See*  
8 *id.*).

9 On July 10, 2006, Defendant sent a letter to Christensen, requesting signed medical  
10 authorizations and a list of all providers rendering treatment to the Striegels. (Ex. G to Mot.  
11 Summ. J., ECF No. 84-7). The letter also informed Christensen as follows:

12 As you are already aware, there are seven (7) people claiming  
13 injuries as a result of this accident. The bodily injury liability limits  
14 on the above policy are 100/300. There is no umbrella policy.  
15 Therefore, we will not be able to settle any individual claims  
16 presented until demands for all injured parties are received.  
17 (*Id.*).

18 On November 8, 2006, Christensen sent another letter to Defendant, acknowledging  
19 receipt of Defendant's July 10, 2006 letter. (Ex. 4 to Response, ECF No. 87). The letter also  
20 referenced the April 28, 2006 letter, stated that "[t]o date we have not heard anything from you  
21 with regards to your evaluation of the claims for our clients," informed Defendant that a copy  
22 of a complaint was enclosed, and requested Gross's residence address "so that we may serve  
23 him personally." (*Id.*).

24 In response, on November 13, 2006, Defendant sent a letter to Christensen,  
25 acknowledging receipt of the November 8, 2006 letter. (Ex. D to Mot. Summ. J., ECF No. 84-  
4). In its letter, Defendant expressed that it had researched its claim file and could not locate  
the April 28, 2006 letter. (*Id.*). Further, Defendant stated as follows:

1 In addition to our written correspondence, I called your office on  
2 May 23, 2006, October 100, 2006, and on October 19, 2006 ...  
3 urging that you forward to us a demand, as we were anxious to move  
4 this matter towards resolution considering we only have a 100/300  
5 policy, which appears to be insufficient to compensate the seven (7)  
6 individuals making claims against our policy. We understand there  
7 are several parties who sustained significant injuries.

8 We have received the bill and records from the health insurer AHC  
9 regarding the Sunrise Hospital inpatient services for [Plaintiff],  
10 immediately following the accident. We do not have any bills or  
11 information regarding Thomas Striegel.

12 ...  
13 Unfortunately, we have very minimal information regarding the  
14 nature and extent of the injuries or the medical expenses for any of  
15 the other parties.

16 ...  
17 We remain anxious to resolve all claims arising from this accident  
18 without the necessity of litigation. However, in light of the serious  
19 injuries sustained by several of the parties, we cannot settle any  
20 individual claims until we have the medical documentation for all  
21 claimants. We have been actively soliciting demands from all  
22 parties. Unfortunately, we cannot guarantee the exact time frame  
23 when this may occur. The remaining parties have not cooperated  
24 with us and responded to our requests for medical documentation  
25 and/or authorizations.

(*Id.*).

18 On November 14, 2006, Christensen sent another letter to Defendant, advising that he  
19 was “in the process of serving the Complaint in the above referenced claim.” (Ex. 5 to  
20 Response, ECF No. 87). Accordingly, the Striegels filed suit in state court against Gross, and  
21 on July 26, 2010, the parties reached an agreement in lieu of trial. (*See* Ex. N to Mot. Summ. J.,  
22 ECF No. 84-14). Pursuant to the agreement, the Striegels would make an offer of proof to the  
23 court as to the amount of damages. (*Id.* 3:21–4:2). Accordingly, the Striegels would not request  
24 more than \$1,500,000, and Gross would not argue for less than \$1,500,000. (*Id.* 4:3–12).  
25 Additionally, Gross agreed to assign to the Striegels any claims he may have against

1 Defendant, and the Striegels agreed to enter into a covenant not to execute the judgment  
2 obtained against Gross. (*Id.* 5:7–13).

3 On September 17, 2007, Defendant filed an interpleader action in state court to resolve  
4 the seven claims. (*See* Ex. 9 to Response, ECF No. 87). Subsequently, on November 25, 2008,  
5 the parties entered into a Stipulation and Order for Release of Inter Pled Funds and Dismissal  
6 of Interpleader. (Ex. L to Mot. Summ. J., ECF No. 84-12). Pursuant to the Stipulation, Plaintiff  
7 received \$100,000 and Thomas Striegel received \$16,520 from the \$300,000 per occurrence  
8 policy limit under Defendant’s policy. (*Id.*). Each of the seven claimants, except for the  
9 Striegels, agreed to dismiss their cases against Gross with prejudice. (*Id.*).

10 On June 3, 2013, Plaintiff filed the instant action against Defendant in state court. (*See*  
11 Pet. Removal, ECF No. 1). Defendant subsequently removed the action to this Court. (*Id.*).  
12 Shortly thereafter, Plaintiff filed her Amended Complaint. (ECF No. 27). Although Plaintiff  
13 does not delineate her individual causes of action, she appears to bring the following claims: (1)  
14 breach of the implied covenant of good faith and fair dealing; (2) breach of contract; (3)  
15 violations of NRS 686A.310; (4) negligence; (5) fraud; and (6) constructive fraud. (Am.  
16 Compl. ¶¶ 18–75).

## 17 **II. LEGAL STANDARD**

18 The Federal Rules of Civil Procedure provide for summary adjudication when the  
19 pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
20 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant  
21 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that  
22 may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248  
23 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable  
24 jury to return a verdict for the nonmoving party. *See id.* “Summary judgment is inappropriate if  
25 reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict

1 in the nonmoving party's favor." *Diaz v. Eagle Produce Ltd. P' ship*, 521 F.3d 1201, 1207 (9th  
2 Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A  
3 principal purpose of summary judgment is "to isolate and dispose of factually unsupported  
4 claims." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

5 In determining summary judgment, a court applies a burden-shifting analysis. "When  
6 the party moving for summary judgment would bear the burden of proof at trial, it must come  
7 forward with evidence which would entitle it to a directed verdict if the evidence went  
8 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing  
9 the absence of a genuine issue of fact on each issue material to its case." *C.A.R. Transp.*  
10 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In  
11 contrast, when the nonmoving party bears the burden of proving the claim or defense, the  
12 moving party can meet its burden in two ways: (1) by presenting evidence to negate an  
13 essential element of the nonmoving party's case; or (2) by demonstrating that the nonmoving  
14 party failed to make a showing sufficient to establish an element essential to that party's case  
15 on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–  
16 24. If the moving party fails to meet its initial burden, summary judgment must be denied and  
17 the court need not consider the nonmoving party's evidence. *See Adickes v. S.H. Kress & Co.*,  
18 398 U.S. 144, 159–60 (1970).

19 If the moving party satisfies its initial burden, the burden then shifts to the opposing  
20 party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v.*  
21 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,  
22 the opposing party need not establish a material issue of fact conclusively in its favor. It is  
23 sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the  
24 parties' differing versions of the truth at trial." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*  
25 *Ass'n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid

summary judgment by relying solely on conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the pleadings and set forth specific facts by producing competent evidence that shows a genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.

At summary judgment, a court's function is not to weigh the evidence and determine the truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249. The evidence of the nonmovant is "to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is not significantly probative, summary judgment may be granted. *See id.* at 249–50.

### III. DISCUSSION

#### A. **Bad Faith**

Insurers have a special relationship with its insureds that arises under the implied covenant of good faith and fair dealing. *Allstate Insurance Co. v. Miller*, 212 P.3d 318, 324 (Nev. 2009). This duty does not arise out of contract, but rather the covenant is imposed on insurers by the law. *U.S. Fidelity & Guaranty Co. v. Peterson*, 91 Nev. 617, 620, 540 P.2d 1070 (1975). "A violation of the covenant gives rise to a bad-faith tort claim." *Miller*, 212 P.3d at 324. Bad faith is "an actual or implied awareness of the absence of a reasonable basis for denying benefits of the [insurance] policy." *Id.* (quoting *Am. Excess Ins. Co. v. MGM Grand Hotels, Inc.*, 102 Nev. 601, 605, 729 P.2d 1352 (1986)).

As recently discussed in *Miller*, there are duties that stem from the covenant of good faith and fair dealing, which when violated, give rise to claim of bad faith. *Id.* In particular, there are two general duties that insurers have to their insureds: the duty to defend and the duty to indemnify. *Id.* These duties then give rise to other duties. The discussion in *Miller* on this point is instructive:

The duty to defend contains two potentially conflicting rights: the insurer's right to control settlement discussions and its right to

1 control litigation against the insured. 14 *Couch on Insurance* 3d §§  
2 200:1, 203:1 (2005). Each of these contractual rights creates  
3 additional duties for the insurer. The right to control settlement  
4 discussions creates the duty of good faith and fair dealing during  
5 negotiations. *See Couch*, supra, at § 203:1 (stating that the insurer's  
6 right to control settlement negotiations may create a conflict of  
7 interest between the insurer and the insured, and therefore, the  
insurer must act in good faith and give the insured's interests equal  
consideration with its own). The right to control litigation creates  
the duty to defend the insured from lawsuits within the insurance  
policy's coverage. *Couch*, supra, at § 200:1.

8 *Miller*, 212 P.3d at 324–25. Accordingly, an insurance company's duty to defend, and potential  
9 duties that arise under this general duty, “attach [ ] upon notice of a demand against its  
10 insured.” *See id.* at 325. It ends once the duty has been discharged. *Id.* at 326.

11 Here, Plaintiff has not presented any evidence from which a reasonable trier of fact  
12 could conclude that Defendant acted in bad faith. Rather, the record evidence demonstrates  
13 that Defendant acted reasonably throughout the claims process. On April 28, 2006, Christensen  
14 made a two-week per person policy limit settlement demand on behalf of “Thomas Striegel and  
15 Alexandra Striegel” for the automobile accident occurring on March 24, 2006. (*See Ex. H to*  
16 *Mot. Summ. J.*, ECF No. 84-8). However, the letter also states that Christensen was still “in the  
17 process of gathering the medical records and bills.” (*Id.*). In July 10, 2006, Defendant sent  
18 Plaintiff a letter advising that, because there were seven people claiming injuries as a result of  
19 the accident and the bodily injury liability limits on the policy were \$100,000 per person and  
20 \$300,000 per occurrence, Defendant would not be able to settle any individual claims presented  
21 until demands for all injured parties were received. (*See Ex. G to Mot. Summ. J.*, ECF No. 84-  
22 7). At that time, Defendant had not received medical records or demands from all of the  
23 claimants involved in the accident. (*See id.*; *Ex. 7 to Response*, ECF No. 87).

24 First, Defendant contends that it did not receive the April 28, 2006 demand letter. (*Mot.*  
25 *Summ. J.* 5:14–15, ECF No. 84). This is supported by Defendant's July 10, 2006 letter, which

1 does not acknowledge the April 28, 2006 letter and requests medical authorization, even though  
2 such authorizations were included with the April 28, 2006 letter. (*See* Ex. G to Mot. Summ. J.,  
3 ECF No. 84-7). Defendant's lack of receipt is further supported by its November 13, 2006,  
4 which informs Christensen that it had not received the April 28, 2006 demand letter. (*See* Ex. D  
5 to Mot. Summ. J., ECF No. 84-4). If Defendant did not receive the April 28, 2006 letter, which  
6 is strongly supported by the record evidence, its failure to settle the Striegels' claim for the per  
7 policy limits within the two-week time period could not have constituted bad faith.

8       Second, even if Defendant did receive the April 28, 2006 demand letter, its decision to  
9 not settle the Striegels' claim for the per policy limits within the two-week time period was  
10 reasonable and did not constitute bad faith. Seven individuals made bodily injury liability  
11 claims against Defendant's policy. (*See* Exs. 7, 9 to Response, ECF No. 87). Further, the  
12 policy had a per occurrence policy limit with no umbrella coverage. (*See* Ex. 2 to Response,  
13 ECF No. 87). Moreover, as of July 10, 2006, Defendant had not received complete medical  
14 documentation from the Striegels to properly evaluate their claim, and had not received  
15 complete documentation or demands from the other five claimants. (*See* Ex. G to Mot. Summ.  
16 J., ECF No. 84-7). Thus, it was reasonable for Defendant to not have settled the Striegels'  
17 claims within the two-week time period and did not constitute bad faith.

18       Moreover, the record evidence does not demonstrate a genuine issue of material fact  
19 regarding whether Defendant's subsequent actions amounted to bad faith. Although Plaintiff  
20 argues that it sent Defendant two letters in November 2006, demonstrating a continued  
21 willingness to settle for the per person policy limit, neither letter informed Defendant of such  
22 continued willingness. (*See* Exs. 4 and 5 to Response, ECF No. 87). Apart from Plaintiff's  
23 willingness to settle for the per person policy limit expressed in the April 28, 2006 letter,  
24 nothing on the record demonstrates that Plaintiff expressed to Defendant a continued  
25 willingness to settle for the per person policy limit after the two-week window closed.

1 Furthermore, Defendant kept Gross informed throughout the entire process. (*See* Dep. of  
2 Rujake Gross 58:22–64:13, 77:2–12, 195:2–197:22, ECF No. 84-2).

3 This case involves similar facts to many cases filed by attorney Christensen in this  
4 District. *See, e.g., Sierzega v. County Preferred Ins. Co.*, 2014 WL 1668630 (D. Nev. Apr. 25,  
5 2014); *AAA Nevada Ins. Co. v. Chau*, 808 F. Supp. 2d 1282 (D. Nev. 2010); *Hicks v. Dairyland*  
6 *Ins. Co.*, 2010 WL 2541175 (D. Nev. Mar. 3, 2010). Each of these cases involved  
7 circumstances in which, shortly after an accident, a letter was sent to an insurance company  
8 offering to settle all claims for the policy limit. In each of these cases, as in the instant case, the  
9 letter stated that the offer would remain open for two weeks, yet included no records or  
10 documentation from which the insurance company could timely assess the value of the victim's  
11 claim. Each court concluded that the insurance company's subsequent refusal to tender the  
12 policy limit within two weeks did not constitute bad faith, as the lack of documentation  
13 regarding the victim's injuries constituted a reasonable basis to deny the claim. *See Sierzega*,  
14 2014 WL 1668630, at \*4–5; *Chau*, 808 F. Supp. 2d at 1287; *Hicks*, 2010 WL 2541175, at \*9.

15 Moreover, in *Chau*, this Court noted that Christensen clearly has a *modus operandi* of  
16 using similar demand letters in multiple cases in this District, which impose an unreasonable  
17 time constraint of two weeks on their demands for payment to set up a bad faith claim. 808 F.  
18 Supp. 2d at 1286, n.1. Since *Chau*, Christensen has unsuccessfully attempted to bring similar  
19 bad faith claims based primarily on a two-week demand letter in at least two more cases, not  
20 including the present action. *See Sierzega*, 2014 WL 1668630; *Kelly v. CSE Safeguard Ins.*,  
21 *Co.*, 2011 WL 4526769 (D. Nev. Sept. 27, 2011). Despite this Court's previous admonishment,  
22 Christensen continues to attempt bad faith actions premised on unreasonable demands,  
23 knowing full well that numerous courts in this District have repeatedly found such claims to be  
24 baseless. Accordingly, the Court will forward this Order to the State Bar of Nevada for  
25 disciplinary review. Moreover, if Christensen attempts to bring before this Court another

1 baseless bad faith claim premised on an unreasonable settlement demand, sanctions will be  
2 imposed.

3 The Court acknowledges that there may be factual scenarios where a settlement demand  
4 with a two-week time limit could give rise to a bad faith claim. However, in these cases, such  
5 settlement demands, made when the insurers lack sufficient information or documentation to  
6 properly evaluate the claims at issue, place an unreasonable demand upon the insurers.  
7 Christensen's two-week demand was especially unreasonable here, where Defendant was not  
8 just waiting on additional documentation from the Striegels but rather, was diligently pursuing  
9 documentation and demands from the five other claimants. It was clearly reasonable that  
10 Defendant decided to wait to receive documentation from all seven claimants, so it could  
11 properly evaluate all of the claims comparatively. Accordingly, the Court will grant  
12 Defendant's Motion for Summary Judgment as to this claim.

### 13 **B. Remaining Claims**

14 Plaintiff bases her remaining claims on the same conduct alleged to support her bad faith  
15 claim. However, the record evidence does not create a genuine issue of material fact as to  
16 whether Defendant breached any provisions of the policy, violated any provisions of NRS  
17 686A.310, or committed negligence, fraud, or constructive fraud. As explained above,  
18 Defendant acted reasonably throughout the claims process. Accordingly, the Court will grant  
19 Defendant's Motion for Summary Judgment as to Plaintiff's remaining claims.

### 20 **IV. CONCLUSION**

21 **IT IS HEREBY ORDERED** that Defendant's Motion for Summary Judgment (ECF  
22 No. 84) is **GRANTED**. Accordingly, Defendant is entitled to judgment as a matter of law on  
23 all claims.

24 The Clerk of the Court shall enter judgment accordingly.

25 **DATED** this 7th day of July, 2015.